

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	3:08-cv-1825
BACARDI CORPORATION,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought pursuant to Section 309(b) and (d) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(b) and (d), for injunctive relief and civil penalties against Bacardi Corporation (“Bacardi” or “Defendant”). Specifically, Bacardi discharged pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), has failed to report monitoring results in violation of Section 308 of the Act, 33 U.S.C. § 1318, and has violated and continues to violate certain terms and conditions of a National Pollutant Discharge Elimination System (“NPDES”) permit issued to Bacardi by EPA pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and 1395, because Bacardi's Cataño, Puerto Rico facility is located, and the alleged violations occurred, in this judicial district.

### **NOTICE**

4. Notice of the commencement of this action has been given to the Commonwealth of Puerto Rico pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

### **PARTIES**

5. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of the EPA ("Administrator").

6. Defendant Bacardi is a privately held corporation organized under the laws of the State of Delaware, which owns and operates a facility located at State Road No. 165, Km. 2.6, Industrial Area, Cataño, Puerto Rico 00962, and is a "person" within the meaning of the Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Bacardi Corporation is the named permittee for NPDES Permit No. PR0000591 ("Permit"), which governs the discharges to the Atlantic Ocean from the facility located at State Road No. 165, Km. 2.6, Industrial Area, Cataño, Puerto Rico 00962 ("Facility").

8. At all times relevant to this Complaint, Bacardi has owned and/or operated and continues to own and operate the Facility at which the CWA violations alleged in this

Complaint occurred and continue to occur.

**STATUTORY AND REGULATORY BACKGROUND**

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States, except in compliance with the requirements of that section and as authorized by, and in compliance with, a NPDES permit issued pursuant to the authority contained in Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source . . . .”

11. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, *inter alia*, biological materials, solid waste, sewage, and chemical wastes.

12. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines the term “navigable waters” as the waters of the United States, including its territorial seas.

13. Part 122 of Title 40 of the Code of Federal Regulations, promulgated under the Act to regulate the NPDES permit program, defines “waters of the United States” to include, in relevant part, “[a]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.” 40 C.F.R. § 122.2(a).

14. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term “point source” as any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

15. Section 502(11) of the Act, 33 U.S.C. § 1362(11), defines the term “effluent limitation” as any restriction established by the Administrator or a State on quantities, rates, and concentrations of chemical, physical, biological, or other constituents discharged from point sources into waters of the United States.

16. Under Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, or such other conditions, including data and information collection and reporting, as the Administrator determines are necessary to carry out the provisions of the Act. Typically such permits include, *inter alia*, effluent limitations, monitoring and reporting requirements, and operating and maintenance requirements.

17. Pursuant to 40 C.F.R. § 122.41(e), a standard condition in all NPDES permits, including the NPDES permit governing the facility at which violations are alleged herein, states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

18. Section 402(i) of the Act, 33 U.S.C. § 1342(i), states that nothing in Section 402 of the Act shall limit the authority of EPA to take enforcement action pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

19. Section 402(k) of the Act, 33 U.S.C. § 1342(k), provides that conforming with a Section 402 permit shall be deemed compliance with Section 301 for the purposes of satisfying Section 309 of the Act.

20. Section 309(a)(3), (b) and (d) of the Act, 33 U.S.C. § 1319(a)(3), (b), and (d), authorize the Administrator to commence a civil action for injunctive relief and for civil penalties for each violation of Section 301 of the Act, 33 U.S.C. § 1311, or any permit condition or limitation implementing, *inter alia*, Section 301 of the Act, 33 U.S.C. § 1311, and contained in a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

### **GENERAL ALLEGATIONS**

21. At all times relevant to this Complaint, Bacardi has owned and operated the Facility, a rum distillery located at State Road No. 165, Km 2.6, Industrial Area, Cataño, Puerto Rico. The Facility property consists of 240 acres located across San Juan Bay from the capital city of San Juan, and includes, *inter alia*, manufacturing and process buildings, warehouses, administrative buildings, and a museum and visitor's center.

22. At all times relevant to this Complaint, Bacardi engaged in the distillation of rum, fermenting blackstrap molasses to produce ethyl alcohol in the form of rum. The fermentation process takes place in approximately 20 fermentation tanks, each with a capacity of approximately 50,000 gallons. The fermentation liquid is then sent through a distillation process, including an alcohol stripper and condenser, to produce ethyl alcohol in the form of rum. Wastes from the fermentation and distillation processes, including sludge bottoms from the fermentation tanks and mostos from the alcohol stripping column, are treated via the Facility's biological treatment system which includes anaerobic digesters and related appurtenances.

23. The Facility currently operates at a maximum production rate of approximately 115,000 proof gallons of rum per day, with an average production rate of approximately 83,600 proof gallons per day.

24. At all times relevant to this Complaint, the Facility has been operating pursuant to NPDES Permit No. PR0000591, which was issued by EPA under authority of Section 402(a) of the Act, 33 U.S.C. § 1342(a), and the terms of the Permit were and are in full force and effect during the relevant time period of the violations alleged herein. The Permit became effective on March 1, 2002 and was scheduled to expire on February 28, 2007, but has been administratively extended and remains in full force and effect.

25. The Permit authorizes the discharge of wastewater from internal Outfalls 002, 003, and 004, into a combined effluent Outfall 001. Pursuant to the Permit, Outfall 001 discharges into a combined outfall that Bacardi shares with the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") Puerto Nuevo and Bayamón Regional wastewater treatment plants. The combined Bacardi/PRASA effluent is then discharged via a Y-shaped multi-port diffuser system ("Joint Outfall"), creating a mixing zone in the Atlantic Ocean. In addition, the Permit sets monitoring requirements and effluent limitations for each of the Outfalls and for the edge of the mixing zone, establishes proper operation and maintenance requirements and monitoring and reporting requirements for the Facility.

26. Specifically, the Permit authorizes the discharge of treated sanitary wastewater from through internal Outfalls 003 and 004, and wastewater from the Facility's biological treatment system through internal Outfall 002. Outfall 001 is the discharge point for all Facility wastewater, including wastewater from internal Outfalls 002, 003 and 004, and is the monitoring point for the Facility's combined wastewater streams. The Permit specifies that the discharge through Outfall 001 shall consist of, *inter alia*, wastewater treated in the biological treatment system including mostos, boiler blow down, clarification plant wastewater,

fermentation and distillation process washwater, cooling tower blow down, floor washwater, and treated sanitary wastewater.

27. Bacardi's Outfalls 001, 002, 003, and 004 and the Joint Outfall are "point sources" that "discharge pollutants" into "navigable waters," all within the respective definitions provided in Section 502(14), (12) and (7) of the Act, 33 U.S.C. § 1362(14), (12) and (7).

28. The Permit requires Bacardi and PRASA to conduct joint monitoring and to meet effluent limitations for certain pollutants at four specified sampling points at the edge of the mixing zone, and at three different depths at each sampling point. Further, the Permit requires Bacardi and PRASA to conduct joint monitoring at two specific background monitoring stations located approximately 100 meters from the edge of the mixing zone.

29. In addition, Bacardi's Permit provided for a 3-year compliance plan to bring Bacardi into compliance with final effluent limitations under the Permit and, during that 3-year period, provided interim effluent limitations for certain pollutants. The Permit further specifies that the final effluent limitations would go into effect on March 1, 2005, unless and until EPA modified the Permit to stay one or more of the final effluent limitations. No such permit modification was issued by EPA.

30. Pursuant to the Permit, Bacardi is required to submit monthly Discharge Monitoring Reports ("DMRs") to EPA. Each DMR must include monitoring results obtained during the previous month. If Bacardi monitors any pollutant more frequently than required by the Permit, the results of that monitoring must be included in the monthly DMR. The Permit also requires Bacardi to include in its DMRs a description of the noncompliance and its cause; the period of noncompliance including exact dates and times; if the noncompliance has not been

corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce eliminate and prevent recurrence of the noncompliance.

31. On or about August 24, 2005, EPA issued a unilateral Administrative Order (CWA-02-2005-3193) (“August 2005 AO”) to Bacardi, which found Bacardi in noncompliance with numerous terms of the Permit and the Act and ordered, among other things, that Bacardi conduct various studies required by the Permit, submit a plan of action for achieving full compliance with final effluent limitations and all other Permit conditions, and provided interim effluent limitations for certain pollutants.

32. On or about March 22, 2006, EPA issued a second unilateral Administrative Order (CWA-02-2006-3040) (“March 2006 AO”) to Bacardi, which found Bacardi in continuing noncompliance with the Act and the Permit, and with the August 2005 AO. The March 2006 AO specified that the August 2005 AO remained in effect, but modified certain schedules and extended the timeline for termination of the interim effluent limitations provided in the August 2005 AO to September 30, 2006, and also required Bacardi to conduct further studies at the Facility.

33. On or about September 28, 2006, EPA issued a third unilateral Administrative Order (CWA-02-2006-3089) (“September 2006 AO”) to Bacardi, which superceded the August 2005 AO and March 2006 AO and found Bacardi in continuing noncompliance with the Act, the Permit, and the March 2006 AO. Among other things, the September 2006 AO extended the interim effluent limits provided in the previous Administrative Orders through March 31, 2007, required Bacardi to conduct an intensive Cyanide monitoring program to identify the potential sources of Bacardi’s ongoing Cyanide effluent violations, and



ordered Bacardi to comply with other terms of its Permit and to continue studies ordered by the two superceded Administrative Orders.

34. On or about March 16, 2007, EPA issued a fourth unilateral Administrative Order and Request for Information (CWA-02-2007-3024) (“March 2007 AO”) to Bacardi, finding Bacardi in continuing noncompliance with the Act, its Permit and the September 2006 AO. Pursuant to this Administrative Order, EPA required Bacardi to comply with any outstanding requirements in the previous Administrative Orders, required Bacardi to conduct intensive acute and chronic toxicity monitoring, and extended the interim effluent limitations through July 31, 2007.

35. On or about July 30, 2007, EPA issued a fifth unilateral Administrative Order and Request for Information (CWA-02-2007-3062) (“July 2007 AO”) to Bacardi, which found Bacardi in continuing noncompliance with the Act, the Permit and the March 2007 AO, and extended the interim effluent limitations provided under the previous Administrative Orders through December 30, 2007. The July 2007 AO also required Bacardi to, *inter alia*, conduct further acute and chronic toxicity monitoring on the Facility’s effluent and continue certain studies required by previous Administrative Orders.

36. On or about December 28, 2007, EPA issued a sixth unilateral Administrative Order and Request for Information (CWA-02-2008-3006) (“December 2007 AO”) to Bacardi. Among other things, the December 2007 AO found Bacardi in continuing noncompliance with the Act, its Permit and the July 2007 AO, extended interim effluent limitations provided under the July 2007 AO through June 30, 2008, and required Bacardi to conduct intensive fecal and total coliform monitoring to identify the sources of Bacardi’s fecal

and total coliform effluent violations.

**FIRST CLAIM FOR RELIEF**  
**(Violations of Effluent Limitations)**

37. Paragraphs 1 through 36 are realleged and incorporated herein by reference.

38. On at least 716 occasions since March 2002 and continuing to the present, Bacardi discharged pollutants from Outfalls 001, 002, 003 and 004 in excess of effluent limitations prescribed in the Permit or in the Administrative Orders issued to Bacardi by EPA.

39. On at least 625 occasions since March 2002 and continuing to the present, Bacardi discharged pollutants from Outfalls 001, 002, 003, and 004 in excess of Daily Maximum effluent limitations prescribed in the Permit or Administrative Orders issued to Bacardi by EPA.

40. On at least 11 occasions from May 2002 until August 2005, Bacardi discharged pollutants from Outfalls 003 and 004 in excess of Weekly Average effluent limitations prescribed in the Permit.

41. On at least 80 occasions since March 2002 and continuing to the present, Bacardi discharged pollutants from Outfalls 001, 002, 003, and 004 in excess of Monthly Average effluent limitations prescribed in the Permit.

42. On at least 210 occasions since on or about December 4, 2002 until on or about December 10, 2003, the combined Bacardi/PRASA discharge exceeded effluent limitations at the edge of the mixing zone in violation of Bacardi's Permit.

43. Bacardi exceeded effluent limitations prescribed in the Permit and Administrative Orders issued by EPA to Bacardi for Arsenic, Biochemical Oxygen Demand ("BOD"), BOD Percent (%) Removal, Cadmium, Color, Copper, Fecal Coliform, Flow Rate,

Fluoride, Free Cyanide, Lead, Manganese, Mercury, Nickel, Nitrogen, Oil and Grease, pH, Phenolic Substances, Selenium, Silver, Sulfides, Surfactants, Temperature, Thallium, Total Coliform, Total Cyanide, Total Suspended Solids, and Zinc.

44. Each discharge of a pollutant in excess of an effluent limitation contained in the Permit constitutes a violation of the Permit and of Section 301 of the Act, 33 U.S.C.

§ 1311. Each discharge of a pollutant in excess of an effluent limitation contained in an Administrative Order issued to Bacardi by EPA constitutes a violation of Section 301 of the Act, 33 U.S.C. § 1311.

45. On each day that Bacardi violated more than one of the effluent limitations contained in the Permit or in an Administrative Order, each exceedance of an effluent limitation constitutes a separate violation of the Permit and/or Administrative Order and of Section 301 of the Act, 33 U.S.C. § 1311.

46. Each violation of effluent limitations calculated for weekly averages (over the course of seven (7) days) constitutes seven (7) separate days of violation of Bacardi's Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

47. Each violation of effluent limitations calculated for monthly averages (over the course of thirty (30) days) constitutes thirty (30) separate days of violation of Bacardi's Permit and of Section 301 of the Act, 33 U.S.C. § 1311.

48. Since March 2002 and continuing to the present, Bacardi has had a total of approximately 3,077 days of violation of effluent limitations contained in its Permit and/or Administrative Orders issued to Bacardi by EPA.

49. Upon information and belief, Bacardi will continue to violate the effluent

limitations contained in the Permit and/or the interim effluent limitations contained in the December 2007 AO, unless restrained by this Court.

50. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Bacardi is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

**SECOND CLAIM FOR RELIEF**  
**(Failure to Report Violations)**

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. Pursuant to the Permit, Bacardi is required to submit monthly Discharge Monitoring Reports (“DMRs”) to EPA. Each DMR must include monitoring results obtained during the previous month. If Bacardi monitors any pollutant more frequently than required by the Permit, the results of that monitoring must be included in the monthly DMR. The Permit also requires Bacardi to include in its DMRs a description of the noncompliance and its cause; the period of noncompliance including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce eliminate and prevent recurrence of the noncompliance.

53. On at least 96 occasions since March 2002, Bacardi failed to report monitoring results, including, *inter alia*, violations of Permit effluent limitations, in its monthly DMRs, in violation of the Permit, 40 C.F.R. § 122.41(l) and Sections 301, 308, and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

54. Upon information and belief, Bacardi will continue to violate the reporting

requirements contained in the Permit unless restrained by this Court.

55. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Bacardi is liable for injunctive relief and for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

**THIRD CLAIM FOR RELIEF**  
**(Failure to Conduct and Report Toxicity Testing)**

56. Paragraphs 1 through 55 are realleged and incorporated herein by reference.

57. The Permit requires Bacardi to conduct quarterly definitive acute and chronic toxicity tests on several organisms for a period of one year, beginning within one hundred eighty (180) days of March 1, 2002, the effective date of the Permit, and thereafter to conduct the toxicity tests on an annual basis. In addition, the Permit states that Bacardi shall report the results of the toxicity tests to EQB within thirty (30) days of conducting those tests. The Permit further requires Bacardi, within thirty (30) days of the effective date of the Permit, to submit to EQB for approval a protocol to conduct the toxicity tests.

58. Bacardi submitted the toxicity testing protocol to EQB on or about March 27, 2002, and EQB approved the protocol on or about January 27, 2005.

59. Bacardi failed to conduct quarterly toxicity tests for the period February 2005 through April 2005, and to report such testing, in violation of the Permit and Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

60. Bacardi failed to conduct quarterly toxicity tests for one of the required organisms for the period August 2005 through October 2005, and to report such testing, in

violation of the Permit and Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

61. Bacardi failed to conduct quarterly toxicity tests for the period November 2005 through January 2006, and to report such testing, in violation of the Permit and Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311, 1318, and 1342.

62. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), and the Debt Collection Improvement Act of 1996, Bacardi is liable for civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States of America prays that:

1. Bacardi be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each unlawful discharge of a pollutant into waters of the United States in excess of effluent limitations prescribed in the Permit and/or Administrative Orders issued to Bacardi by EPA, civil penalties of \$27,500 per day for each violation of its Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

2. Bacardi be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each violation of the reporting requirements prescribed in the Permit, civil penalties of \$27,500 per day for each violation of its Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of \$32,500 per

day for each violation occurring after March 15, 2004, up to the date of judgment herein.

3. Bacardi be assessed, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), for each failure to conduct toxicity testing and to report the results to EQB as required by the Permit, civil penalties of \$27,500 per day for each violation of its Permit occurring after January 30, 1997, and, pursuant to the Debt Collection Improvement Act of 1996, civil penalties of \$32,500 per day for each violation occurring after March 15, 2004, up to the date of judgment herein.

4. Bacardi be permanently enjoined, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), from any and all future violations of the Act and of the Permit and any successor permits, and from discharges of pollutants except as authorized by permit under Section 402 of the Act, 33 U.S.C. § 1342.

5. Bacardi be ordered to develop a plan and schedule designed to bring its Facility into prompt compliance with the terms and conditions of the Permit and the Act.

6. Bacardi be ordered to reimburse the United States for the costs and disbursements of this action.

7. This Court grant the United States such other and further relief as it deems just and proper.

Respectfully submitted,

RONALD J. TENPAS  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

Dated: July 31, 2008

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